Why Mediation?

Pennsylvania Office for Dispute Resolution

Presented by Dr. Nancy Geist Giacomini, Mediator
Session Objectives

1) **Introduce** mediation as an inclusive process that empowers parties in conflict to build sustainable future oriented results and relationships while centering the student.

2) **Advocate** for the application of conflict management practices that support inclusive excellence in schools.

3) **Invite** questions and concerns to help inform and improve the partnership between special education leaders and the PA Office for Dispute Resolution.
As We Gather …

Please jot down questions, perceptions, experiences and concerns about mediation that may be in the way of more fully utilizing ODR services. I will collect and review these for discussion later in the program, and you may self-identify or not, as you like.
Office for Dispute Resolution (ODR)

- Administered out of Harrisburg with contract mediators throughout the state

- Funded by the Department of Education (PDE) to meet federal requirement of having due process and mediation available to parents and local education agencies (LEAs)

- Provides additional non-mandated dispute resolution services
ODR Services

Mandated Services:
- Mediation
- Due Process Hearings

Non-Mandated Services:
- Special Education ConsultLine
- IEP/IFSP Facilitation
- Resolution Meeting Facilitation
- Creating Agreement Training
- HO Settlement Conference
- Parent/Family Engagement Project

Emerging Practices & Process Options
Informed by Restorative Justice & Conflict Coaching Training
Mediator Requirements

- **Independent, experienced contractors** with backgrounds as attorneys, practitioners, consultants, former educators, therapists, and faculty.

- **Prerequisite training** in mediation + a working knowledge of special education laws and regulations.

- **Neutral third party** who is not an employee of the agency involved in the education or care of the child and does not have a personal or professional conflict of interest.

  www.odr-pa.org/mediator-biographies/
Stakeholder Council

- Diverse membership that includes parents, advocates, attorneys, educators, constituency groups
- Self-sustaining with functional input on ODR services
- Interviews hearing officer candidates and makes recommendations
Pennsylvania is one of four states selected by The Center for Appropriate Dispute Resolution in Special Education (CADRE) as an “exemplar state” in the area of special education dispute resolution.
ODR receives 400+ mediation requests each year resulting in 77-84% agreement. Due process requests are more than double this rate.
Why Mediation

- Mediation is voluntary. All rights and responsibilities under special education law, such as the right to a due process hearing, stay in place.

- **ODR arranges time, date and place** of the mediation, assigns mediator and pays all mediator fees and expenses*

- Mediation is **an inclusive process that empowers all parties** to build sustainable future results and relationships **while centering the student**.

- Agreements are binding and often more satisfying than due process outcomes.

- Focuses on mutual-problem solving, is less stressful, less expensive, and less time-consuming than a hearing.
## Mediation vs Due Process

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<thead>
<tr>
<th></th>
<th>Mediation</th>
<th>Due Process</th>
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<tbody>
<tr>
<td><strong>Time</strong></td>
<td>Usually scheduled w/i 10 days.</td>
<td>May require several sessions.</td>
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<td></td>
<td>Reserve full day but sessions often last 3-5 hours and rarely require more than one session.</td>
<td>Prep of witnesses and evidence can be time-consuming for all.</td>
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<tr>
<td><strong>Cost</strong></td>
<td>ODR pays fees. Advocates or experts paid by inviting party. Attorneys do not participate.</td>
<td>Often take several sessions and usually include attorney fees and/or expert witness fees.</td>
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<tr>
<td><strong>Outcome</strong></td>
<td>Mediators do not decide outcomes. They facilitate collaborative problem solving and relationship building to help parties reach agreements.</td>
<td>Decisions are imposed by the hearing officer and while binding, may not satisfy either party or help rebuild trust and relationships.</td>
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Why Mediation

While facilitative style mediation often helps parties write an agreement, our commitment as neutral (multi-partial) third parties is to empower people in ways that improve relationships and restore trust, communication and collaborative decision-making.

“I’m never going to write a better due process decision than a mediation or settlement agreement.”

Brian Jason Ford, ODR Hearing Officer
Choosing Mediation

Choosing Between Process Options

Facilitation
- Full IEP team collaboration is needed to get past stuck-ness.
- Priority is to work together to complete the IEP.
- Parties are in an ongoing relationship on behalf of a student.

Mediation
- A smaller group of key stakeholders may be useful.
- Parties favor a neutral third party leading the meeting agenda.
- Option of creating a binding written agreement is appealing.

Due Process
- Results are more important than relationships.
- Precedent setting is preferred over confidentiality.
- Parties seek to address injustice or recoup monetary damages.
Mediation Process

1. **Introductions, Orientation & Paperwork Review** led by mediator.

2. **Uninterrupted Time for Opening Remarks** during which participants will each share perspectives on issues and hoped for outcomes.

3. **Joint Dialogue** follows as parties clarify shared issues and work towards creative brainstorming and solutions.

4. **Agreement Writing / Signed Agreement** that resolves some or all issues raised today is often the result of mediation.

5. **Caucuses & Breaks** may be taken as requested.
Ground Rules (Shared Expectations)

1. Work together as a student-centered, collaborative team.
2. Focus on present concerns and solutions rather than past problems.
3. Share information openly and listen patiently. Treat each other with respect.
4. Help create options, resolve issues and respect different interests.
5. Work in good faith to abide by a mediated agreement and/or IEP.
6. Understand that combative participants may be asked to leave.
7. Respect the nature of the discussion as private/confidential.
8. Not call the mediator as a witness in legal proceedings.
10. Not record the session (and turn phone ringers off).
11. A copy of an agreement will go to ODR. Another goes in student’s file.
Most Frequent Mediation Issues

- Birth - 3
  - Related Services

- Age 3-5 & School Age
  - Related Svs
  - IEP issues
  - Placement

- Protected Handicapped/504
  - Chapter 15/Section 504

- Gifted
  - Eligibility
  - GIEP Issues
  - Evaluation

*Compensatory Education* *IEP Disputes* *Placement* *Evaluation* *Due Process*
<table>
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<tr>
<th>Position: You DO NOT CARE ABOUT MY CHILD! You withheld promised services and they have made NO progress!</th>
</tr>
</thead>
<tbody>
<tr>
<td>We DEMAND a new evaluation and private district-funded placement or else DUE PROCESS!</td>
</tr>
<tr>
<td>Underlying interests, needs, identities, traditions, experiences, emotions, hopes and fears that orient a set of beliefs and values.</td>
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<tr>
<td>Building empathy, identifying issues and finding common ground yields inclusive sustainable win-win results and protects future oriented trustworthy relationships.</td>
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<table>
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<tr>
<th>Position: We DO CARE ABOUT THIS STUDENT! We did not withhold services and they are making data-based progress!</th>
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</thead>
<tbody>
<tr>
<td>We WILL NOT re-evaluate and cannot fund private placement! We can serve this student in district!</td>
</tr>
<tr>
<td>Underlying interests, needs, identities, traditions, experiences, emotions, hopes and fears that orient a set of beliefs and values.</td>
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YOU DO NOT CARE

We all care and have different points of view. Tell us how you see it and we will listen.

We agree that OT fell short when the provider left. We are sorry and frustrated too. Let’s think about ways to make up lost time.

What new information related to evaluations and private placement can we exchange to understand interests and inform next steps?

When can we schedule an IEP meeting to incorporate new OT services, related goals and decide how to track progress?
Mediation Agreement

- Discussion will remain confidential.
- The agreement is legally binding and enforceable.
- Parties agree to abide by and fulfill the agreement.

1. Parties agree that OT will resume for the 2019-2020 school year 3x per week for 20 minutes per session.

2. The District agrees to fund 10 hours of OT over the summer.

3. The family and director of special education will visit Future Interest Academy on August 1, 2019 at 10 a.m.

4. The IEP Team will meet on October 4, 2019 to review progress and revisit a request to re-evaluate …
Total Mediation Requests

*Gifted mediation requests make up ~ 12% with slightly higher agreement rates.
“The mediator remained neutral and was skilled at guiding the conversation. He is extremely professional and the meeting was organized in a way that we were able to expeditiously reach an agreement.”

“The mediator was fantastic. She did a great job of explaining the mediation process and providing a safe, respectful environment for the district and parent to find a solution.”

“The mediator was open, fair, and balanced. They were very helpful in moving the District and the parent towards resolution. We appreciated their support and assistance.”

“The mediator’s listening skills, knowledge of when to support, and strength in moving the process along, helped to bring the team to making the first steps in coming to an agreement.”
Discussion

1. Lack of Awareness?
2. Inaccessible Resources?
3. Perceived Lack of Skills?
4. Distrust between Parties?
5. District Culture?
6. Bad Past Experience?
7. Feels Like Over-Escalation?
8. Loss of Power/Control?
9. Awkward to “Air Dirty Laundry”?
10. Time & Resource Expenditure?
Question #1

Mediation can restore opportunities for:

- a) Trust
- b) Communication
- c) Collaborative decision making
- d) All of the Above
Question #2

The PA Office for Dispute Resolution provides all of the following process options within an integrated conflict management framework except:

a) Counseling
b) IEP Facilitation
c) Mediation
d) Due Process Hearings
Mediators are:

a) Stakeholders
b) Decision makers
c) Neutral third parties
d) Teachers
Question #4

Steps in the mediation process do not include:

a) Uninterrupted time
b) Testimony
c) Joint dialogue
d) Caucuses
Question #5

Mediation is a viable process option for educators and families who want to:

a) Resolve conflict without going to due process
b) Fight
c) Have someone tell them what to do
d) Revise an IEP
e) One of the above
Question #6

Ground rules in mediation include commitments to:

a) Work together as a student-centered collaborative team
b) Focus on present concerns and solutions rather than past problems
c) Treat each other with civility and respect
d) Abide by a mediated agreement
e) All of the above
Guides & Manuals
The Office for Dispute Resolution

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Dr. Nancy Geist Giacomini is a mediator, educator and advocate for integrated conflict management systems. She has mediated for the PA Office for Dispute Resolution for nearly a decade. Before that she mediated special education disputes for the Conflict Resolution Program at the University of Delaware while earning her doctorate in educational leadership, with original research was on building collaborative capacity in IEP meetings.

Nancy is a subject matter expert and policy consultant advancing inclusive, restorative conflict resolution initiatives in education. She teaches graduate online courses with Sullivan and St. Bonaventure Universities in conflict, diversity, human resource management and restorative justice. She is certified to practice across a spectrum of options as a mediator, victim-offender conference facilitator, conflict coach and due process administrator. Nancy is also a published author and Journal of Conflict Management (JOCM) editorial board member. Her 2009 co-edited publication Reframing Campus Conflict: Student Conduct Practice Through a Social Justice Lens is under revision for a ten year anniversary release.

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